

ESTTA Tracking number: **ESTTA349461**

Filing date: **05/25/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91194547
Party	Defendant THE CANNON GROUP OF COMPANIES, INC.
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Submission	Answer
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Date	05/25/2010
Attachments	ANSWER TO OPPOSITION.pdf ( 9 pages )(129953 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Application of:	)	International Class 36
The Cannon Group of Companies	)	
DBA GUNPAL	)	
	)	
	)	Published: Dec 8, 2009.
Serial No.: 77/784,325	)	
Filed: July 18, 2009	)	
	)	
Mark: GUNPAL	)	
	)	
Opposer: PayPal, Inc.	)	
	)	

**ANSWER TO NOTICE OF OPPOSITION WITH AFFIRMATIVE DEFENSES**

Applicant, The Cannon Group of Companies, Inc. hereby submits it's Answer to the Notice of Opposition filed by Opposers, PayPal, Inc (PayPal) as follows, with the following numbered Paragraphs corresponding to the numbers of the Paragraphs of the Notice of Opposition under the headings used in the Notice of Opposition:

**PAYPAL'S BUSINESS**

1. Applicant admits the allegations of Paragraph 1.
2. Applicant admits that PayPal's primary website is located at paypal.com and has been located there since 1999. Applicant is without knowledge or information sufficient to form a belief as to the remainder of Paragraph 2 and therefore denies the same.
3. Applicant admits the allegations of Paragraph 3.
4. Applicant admits the allegations of Paragraph 4.

5. Applicant admits the allegations of Paragraph 5.
6. Applicant is without knowledge or information sufficient to form a belief as to the remainder of Paragraph 6 and therefore denies the same.

### **PAYPAL'S MARKS**

7. Applicant admits the allegations of Paragraph 7.
8. Applicant admits that PayPal is shown as the owner of Reg, No(s).

2,646,490

2,879,561

2,959,971

3,069,209

3,680,256

in the records of the U.S. Patent and Trademark Office. Applicant is without knowledge or information sufficient to form a belief as to the remainder of Paragraph 8 and therefore denies the same.

9. Applicant admits that PayPal is shown as the owner of Application, No(s).  
77/856,538 in the records of the U.S. Patent and Trademark Office. Applicant is without knowledge or information sufficient to form a belief as to the remainder of Paragraph 9 and therefore denies the same.
10. Applicant is without knowledge or information sufficient to form a belief as to the remainder of Paragraph 10 and therefore denies the same.

11. Applicant is without knowledge or information sufficient to form a belief as to the remainder of Paragraph 11 and therefore denies the same.
12. Applicant is without knowledge or information sufficient to form a belief as to the remainder of Paragraph 12 and therefore denies the same.
13. Applicant denies the allegations in Paragraph 13.
14. Applicant is without knowledge or information sufficient to form a belief as to the remainder of Paragraph 14 and therefore denies the same.
15. Applicant is without knowledge or information sufficient to form a belief as to the remainder of Paragraph 15 and therefore denies the same.
16. Applicant denies the allegations in Paragraph 14.

#### **APPLICANT AND IT'S PENDING APPLICATION**

17. Applicant admits the allegations in Paragraph 17.
18. Applicant denies that it's Mark is "highly" similar to Opposer's, that it copies Opposer's marks, that the term GUN is merely descriptive, that the term "PAL" is arbitrary, and that it's services are identical to those of Opposer. Applicant admits that it's mark consists of "Term plus Pal" however it denies that it emulates and calls to mind "PayPal".
19. Applicant denies the allegations in Paragraph 19.
20. Applicant admits that it's website contains "an alternative to PayPal that des not discriminate on the nature of your transaction, requiring only that the merchandise or services you purchase be legal" however Applicant denies that it has created a mark that conveys the message to consumers that it is "PayPal for guns".
21. Applicant admits that it provides online payment and money transfer services but

- denies the remaining allegations in Paragraph 21.
22. Applicant admits that it's press release regarding an XM Radio appearance contained a quotation by the Show Host contained a quote as follows "saw a void in the world of firearms sales and filled it with an online payment system solely devoted to firearms and firearm accessories. (The popular online pay system, Paypal, will not allow users to buy firearms with its service.)" however Applicant denies that it's services are identical or marketed in the same way as PayPal's.
23. Applicant denies the allegations in Paragraph 23.
24. Applicant admits the allegations in Paragraph 24.
25. Applicant admits the allegations in Paragraph 25.

**FIRST GROUND FOR OPPOSITION: LIKELYHOOD OF CONFUSION**

26. There are no allegations contained in Paragraph 26.
27. Applicant denies the allegations in Paragraph 27.
28. Applicant denies the allegations in Paragraph 28.
29. Applicant denies the allegations in Paragraph 29.

**FIRST GROUND FOR OPPOSITION: DILUTION OF A FAMOUS MARK**

30. There are no allegations contained in Paragraph 30.
31. Applicant admits the allegations in Paragraph 31.
32. Applicant denies the allegations in Paragraph 32.
33. Applicant admits the allegations in Paragraph 33.
34. Applicant is without knowledge or information sufficient to form a belief as to the remainder of Paragraph 34 and therefore denies the same.
35. Applicant denies the allegations in Paragraph 35.

36. Applicant denies the allegations in Paragraph 36.

37. Applicant denies the allegations in Paragraph 37.

38. Applicant denies the allegations in Paragraph 38.

39. Applicant denies the allegations in Paragraph 39.

40. Applicant denies the allegations in Paragraph 40.

## **AFFIRMATIVE DEFENSES**

### **First Affirmative Defense**

41. Opposers' Notice of Opposition fails to state legally sufficient grounds for sustaining the opposition.

### **Second Affirmative Defense**

42. Applicant's mark is sufficiently distinctively different from Opposers' marks so as to avoid confusion, deception or mistake as to the source, sponsorship, association or approval of Applicant's goods.

### **Third Affirmative Defense**

43. The word "PAL" is highly diluted as a trademark formative for trademarks used with "OfferPal" (USPTO number 77436051), "AuctionPal" (USPTO number 3313880) as well as hundreds of other registered marks, and hence weak. Opposers' trademark rights, if any, to the PAL-containing marks extend no further than to the specific combinations that Opposer alleges it owns, neither of which is the same as or confusingly similar to Applicant's mark in terms of connotation, appearance and/or pronunciation.

### **Fourth Affirmative Defense**

44. Opposers' parent company "eBay, Inc" gives tacit blessing to the use of "Term+[Pal]" by offering "PayMate" (USPTO serial number 77683615) as an officially endorsed payment method. "Mate" and "Pal" are generic synonymous entitled no protection.

#### **Fifth Affirmative Defense**

45. Opposers' claims are barred by the doctrines of waiver, estoppel, unclean hands, and by California Unfair Competition law BCP CODE § 17200.

#### **Sixth Affirmative Defense**

46. Opposer first filed a notice of extension of time to file an opposition on behalf of Mattel, Inc. Shortly thereafter they filed another extension of time on behalf of PayPal, Inc. Opposer then filed another extension of time to file an opposition, all of which interfered with the business activities of Applicant. This interference was knowing, malicious, and premeditated, constituting tortious interference with business relations, and has caused significant material disruption in business.

#### **Seventh Affirmative Defense**

47. Opposer knowingly and intelligently filed their extension and Opposition despite knowledge the claim was meritless, as such this is frivolous litigation.

#### **Eighth Affirmative Defense**

48. Opposer knowingly and intelligently conspired with others to unfairly and unlawfully impact the business practices of Applicant, with the intent to deprive, causing significant material disruption in business.





May 25, 2010.

A handwritten signature in black ink, appearing to read 'Ben Cannon', with a long horizontal flourish extending to the right.

/x/ \_\_\_\_\_

Benjamin Philip Cannon  
Chairman / CEO  
The Cannon Group of Companies, Inc.  
DBA GUNPAL, Inc.

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Applicant's Answer to the Notice of Opposition has been served upon [BOBBY A GHAJAR], [HOWERY LLP], [550 South Hope Street, Suite 1100, Los Angeles, CA 90071] via e-mail ([ghajarb@howery.com](mailto:ghajarb@howery.com)) and by regular U.S. mail this 25<sup>th</sup> day of May, 2010.



Benjamin P. Cannon

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